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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE 46TH FLOOR
PHILADELPHIA, PA 19103

EXAMINER

CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/701,098	Applicant(s) KLAUCK, WOLFGANG	
	Examiner MONZER R CHORBAJI	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-19,25-33 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-19,25-33 and 36-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This final office action is in response to the amendment received on 04/16/2004

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 9-15, 18, 25, and 27-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Streit et al (U.S.P.N. 4,178,264).

With respect to claims 9 and 25, Streit et al teaches a process (examples I-III) and a dimensionally stable composition (col.3, lines 42-44) for the controlled humidification of indoor air (col.3, lines 48-52) including 1.5-15% by weight of alkali metal carboxylates (col.2, lines 28-30 and lines 43-44) and 55 to 95% by weight of water (col.3, lines 10-12). Furthermore, the composition of Streit et al includes a small amount of (col.2, lines 32-33) of a water-soluble solvent (col.2, line 52). Small amount is considered as 1.0 percent by weight of water-soluble ethylene glycol as shown in col.2, line 32. On page 5, lines 7-8, applicant provides example of water-soluble solvent and ethylene glycol or ethane-1, 2-diol fits the description.

With respect to claims 10-15, 18, 25, and 27-32, Streit et al teaches the following: insecticides (col.4, line2), additives are present in amounts of up to 20% by weight (col.4, lines 1-2), sodium carboxylates (col.2, lines 43-44), 2 to 10% by weight of alkali metal carboxylates (col.2, lines 28-30), 70 to 98% by weight of water (col.3, lines 10-

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12), composition is placed on a suitable support in a room filled with air (col.3, lines 46-48), the composition is exposed in a suitable holder to a stream of the indoor air supply (col.3, lines 48-52) such that the room in the air represents the air supply and molecules of air are inherently in flowing motion represent the feature "stream", and the composition has a disc shape (col.3, lines 57-59).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 36 and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Streit et al (U.S.P.N. 4,178,264) in view of Neumiller (U.S.P.N. 4,294,821).

With respect to claim 36, Streit et al discloses a dimensionally stable composition (col.3, lines 42-44) including 1.5-15% by weight of alkali metal carboxylates (col.2, lines 28-30 and lines 43-44) and 55 to 95% by weight of water (col.3, lines 10-12), but fails to disclose the use of the compounds listed in such a claim. Neumiller's odor absorbing

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composition includes oleic acid in a range of about 0.1 to 2% by weight (col.3, lines 62-68). As a result, it would have been obvious to one having ordinary skill in the art to modify the composition of Streit et al by substituting one alkali metal carboxylates carboxylic acid for another since, for example, oleic acid has the surprising ability to keep the odors absorbed by the composition within the composition and not allowing them to regenerate (Neumiller, col.3, lines 55-58).

With respect to claims 38-39, Neumiller teaches including the component glycerine (glycerine is a synonym for glycerol) in the odor absorbing composition (col.3, lines 45-52).

6. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Streit et al (U.S.P.N. 4,178,264) in view of Kellett et al (U.S.P.N. 5,034,222).

With respect to claim 37, Streit et al discloses a dimensionally stable composition (col.3, lines 42-44) including 1.5-15% by weight of alkali metal carboxylates (col.2, lines 28-30 and lines 43-44) and 55 to 95% by weight of water (col.3, lines 10-12), but fails to teach the inclusion of compounds listed in such a claim. Kellett's air freshening composition includes the component clays (col.8, line 52). Thus, it would have been obvious to one having ordinary skill in the art to modify the composition of Streit et al to include clays in order to increase the volume of the composition (Kellett et al, col.8, lines 46-47).

7. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Streit et al (U.S.P.N. 4,178,264) in view of Farmer (U.S.P.N. 6,123,906).

The teachings of Streit et al have previously been set forth with regard to claims 9-15, 18, 25, and 27-32. With regard to claims 16-17, Streit et al fails to disclose heating or cooling the indoor air supply. However, Farmer teaches that the stream of indoor air is heated or cooled before being applied to the freshener (col.1, lines 8-10 and lines 44-48). Thus, it would have been obvious to one having ordinary skill in the art to modify the process of Streit et al to include central heaters or air conditioners in order to provide a simple and much more efficient way of exposing the dimensionally stable composition (Farmer, col.1, lines 24-26).

8. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Streit et al (U.S.P.N. 4,178,264) in view of Hautmann (U.S.P.N. 4,117,110).

With respect to claim 19, Streit et al fails to disclose a pH range values for the composition. However, Hautmann discloses that the pH-value is not higher than 9 (col.2, lines 31-33). Thus, it would have been obvious to one having ordinary skill in the art to modify the process of Streit et al by preventing the pH-value from being too high in order to exactly determine the desired surplus of stearic acid (Hautmann, col.7, lines 6-9).

9. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Streit et al (U.S.P.N. 4,178,264) in view of Martin et al (U.S.P.N. 5,788,155).

With respect to claim 26, Streit et al fails to teach packaging the composition in an airtight and water proof pack. However, Martin et al teaches sealing the composition from the outer environment (abstract, lines 7-12) such a sealing mechanism is capable of maintaining the composition in an airtight and water proof conditions. Thus, it would

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have been obvious to one having ordinary skill in the art to modify the composition of Streit et al to include an outer peelable vapor-impermeable membrane in order to prevent volatilization of the air freshener medium through the permeable membrane from the reservoir enclosure (Martin et al, col.2, lines 45-49).

10. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Streit et al (U.S.P.N. 4,178,264) in view of Hautmann (U.S.P.N. 4,117,110).

With respect to claim 33, Streit et al fails to teach a specific range for the pH-values. However, Hautmann discloses that the pH-value is not higher than 9 (col.2, lines 31-33). Thus, it would have been obvious to one having ordinary skill in the art to modify the composition of Streit et al by preventing the pH-value from being too high in order to exactly determine the desired surplus of stearic acid (Hautmann, col.7, lines 6-9).

Response to Arguments

11. Applicant's arguments filed 04/16/2004 have been fully considered but they are not persuasive.

On page 6 of the response, applicant argues, "In a preferred embodiment, the composition is formulated with virtually no solvent. Thus, the Streit reference cannot anticipate or render obvious claim 9, as the Streit reference requires the presence of solvent". The examiner disagrees. The word "virtually" is considered as "nearly or almost" such that "almost" means very close or approximately. So, amended claim 9 is considered to contain small amounts of a water-soluble solvent (Merriam-Webster, page 1320). The feature "virtually" is considered as "almost" such that "almost" represents a small amount of the water-soluble solvent. As a result, claim 9 does contain small

amount of a water-soluble solvent, such as 1% weight of ethylene glycol (col.2, lines 32 and 52). Thus, claim 9 is anticipated by the Streit et al reference. The same reasoning applies to applicant remarks on pages 6-7 of the response.

With regard to the newly added claims 38-39, the Neumiller reference was combined with the Streit et al reference since Neumiller teaches including the component glycerine (glycerine is a synonym for glycerol) in the odor absorbing composition (col.3, lines 45-52) is known.

With regard to the newly added claim 36, the Neumiller reference was combined with the Streit et al reference since Neumiller's odor absorbing composition includes oleic acid in a range of about 0.1 to 2% by weight (col.3, lines 62-68).

With regard to the newly added claim 37, The Kellett et al reference was combined with the Streit et al reference since Kellett's air freshening composition includes the component clays (col.8, line 52).

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 8:30-5:00.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Monzer R. Chorbaji *MRC*
Patent Examiner
AU 1744
07/18/2004

Robert J. Warden, Sr.
ROBERT J. WARDEN, SR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700